

# COURTROOM PSYCHICS

## FORUM

*Editors' Note: The judicial system in this country has been using the abilities of psychics with increasing regularity. The Honorable Howard E. Goldfluss, acting justice of the Supreme Court, State of New York, comments on what appears to be a growing trend. Justice Goldfluss is a member of the New York State Task Force on Child Abuse and author of The Judgment.*

The highest priority of our judicial system should always be the quest for truth. Although it seems reasonable to assume that judges and juries will be skeptical of the claims of the paranormal—ESP, clairvoyance, psychokinesis, and the like—to everyone's surprise, no one is laughing. Law enforcement agencies, juries, and judges are finally acknowledging that we don't have answers to the unexplainable. It really shouldn't shock people that psychic phenomena have found a forum in the courts, requiring us to deal with novel and fascinating ideas.

If I've learned anything as a sitting judge for 15 years and as a practicing lawyer for 24, it is that the law must have an open mind. Concepts not considered a generation ago are accepted today. Trial lawyers, for instance, have psychics sit at counsel tables during the jury selection process in an effort to determine if prospective jurors are telling the truth. Psychics claim that they can weed out undisclosed bias or prejudice. Sometime in the future the courts may have to decide the propriety of that procedure.

Acceptance of psychics in the American courtroom has been gradual. The first major publicized case occurred in 1975, when ESP was used in a trial. Joan Little, an inmate in a Raleigh, North Carolina, jail, fatally stabbed a prison guard. She claimed he had tried to rape her. Jerry Paul, her chief defense counsel, wanted to know at the outset where a potential juror's sympathy would lie. He employed psychic Richard Wolf to consult with him in jury selection. After Little's acquittal, Paul said, "Wolf wasn't one hundred percent correct, but he was more often right than wrong." Paul saw Wolf's role as

essential to the reaching of the verdict.

There are other examples of psychic successes that even the most jaded and skeptical would find difficult—if not impossible—to ignore. Greta Alexander of Delavon, Illinois, calls herself a parapsychologist. She claims she acquired her psychic powers 26 years ago, after being struck by lightning. I know the normal reaction to such a claim: a wink and a finger moving counterclockwise around the ear, signifying that the woman is playing with less than a full deck.

But in 1977 she pinpointed the missing bodies of a three-year-old boy and a twenty-one-year-old man who drowned in separate incidents in Iowa. Those discoveries were documented as authentic. In 1983 she again gave the police information that led a team of 22 police and civilians volunteers to a wooded area near Peoria, Illinois. At the designated site, they found the skeletal remains of a woman who had been missing for a month. Alexander had given the police a number of specific details about the missing woman: The head would be detached from the body (confirmed); the remains would be near a bridge (confirmed); a salt or rock pile would be close by (confirmed). Police agencies throughout the country now routinely consult Alexander. No one doubts her sanity or believes she is a charlatan.

There is strong evidence that the public is growing more tolerant of psychic phenomena. Noreen Reiner, a self-proclaimed psychic in Medford, Oregon, is a case in point. She took umbrage at an assertion by John D. Merrill, cofounder of Northwest Skeptics, that she was a fraud. She sued for libel. At the trial she testified that she instructed police trainees throughout the nation on the value of psychic intervention in crime investigation. That fact was not lost on the jury, which awarded \$25,000 to Reiner and in so doing gave fair warning to all defamers similarly inclined that they had better be prepared with the facts.

Intervention by psychics will raise vexing but intriguing legal problems, including issues of coercion and the right

to privacy. Assume, says Ronald J. Allen, professor at Northwestern University School of Law, that a suspect is given his Miranda rights and consents to waive the presence of a lawyer. He answers questions put to him by the police. Assume further that the police arrange to have a psychic present during the questioning. Could his statement be stricken because it was coerced? Allen believes this is a strong possibility. "If the police have reason to believe the suspect is susceptible to that interrogation method and use it to break down his will, there could be a Fifth Amendment claim," Allen says.

California criminal lawyer Harold Weitzman is concerned with the consequences of the mind-probing abilities of psychics. A person in custody has the constitutional right to remain silent. But if his thoughts are "read" and transmitted to the police, has he then been deprived of a reasonable expectation of privacy? "I just don't believe it's possible," says Weitzman, "but if psychics can do what they say, it would be the height of a Fourth Amendment violation. If there's any place you have a reasonable expectation of privacy, it's in your mind."

For the present these questions are debatable. Acceptance of psychic phenomena has not reached the point where facing such legal problems is imminent. But we will have to deal with them in the future. Evidence is always a matter of degree. Loose ends prevail in the courtroom. Certainty is a rare commodity. Psychics do not solve crimes, nor do they resolve lawsuits. But if they contribute in any way to the discovery of the truth, then they can't be ignored.

Those of us who participate in the judicial system must be concerned with the discovery of truth as our prime objective. The value of psychic assistance in finding the truth has yet to be determined. Some psychics will turn out to be frauds; some will be legitimate. We will not be able to judge them until we listen to what they have to say. If justice is to be served, we should not be deterred by our inability to explain how such a noble purpose is accomplished. □